IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ROBERT LEE WILLIAMS, a/k/a "Pimpin' Rob," Defendant.	No. CR 05-4123-MWB PRELIMINARY INSTRUCTIONS TO THE JURY

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PRELIMINARY INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Preliminary Instructions to help you better understand the trial and your role in it and to instruct you on the law that you must apply in this case. Consider these Preliminary Instructions, together with all written and oral Instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case. In considering these Preliminary Instructions, the order in which they are given is not important.

As I explained during jury selection, a Grand Jury charges defendant Robert Lee Williams, who is allegedly also known as "Pimpin' Rob," with the following six separate offenses: In Count 1, conspiracy to distribute 50 grams or more of crack cocaine; in Count 2, possession with intent to distribute 23.74 grams of crack cocaine; in Count 3, distribution of .44 grams of crack cocaine; in Count 4, distribution of 1.1 grams of crack cocaine; in Count 5, possession of a firearm in furtherance of a drug-trafficking crime; and in Count 6, being a felon in possession of a firearm.

As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty to each of the crimes charged against him; therefore, he is presumed to be innocent of each offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the crimes charged against him. You will find the facts from the

evidence. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts that have been established by the evidence. You will then apply the law, which I will give you in my Instructions, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my Instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment I may make that I have any opinions on how you should decide the case.

Please remember that only defendant Robert Lee Williams, not anyone else, is on trial here. Also, remember that the defendant is on trial *only* for the offenses charged against him, not for anything else.

You must return a separate, unanimous verdict on each offense charged against the defendant.

PRELIMINARY INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific Preliminary Instructions on the offenses charged in this case, I must explain some preliminary matters.

"Elements"

The offenses charged in this case each consist of "elements," which the prosecution must prove beyond a reasonable doubt against the defendant in order to convict him of that offense. I will summarize in the following Preliminary Instructions the elements of the offenses with which the defendant is charged.

Nicknames

In the Indictment, the Grand Jury alleges that defendant Robert Lee Williams sometimes goes by the nickname "Pimpin' Rob." The identity of a defendant as the person who committed a crime is an element of every crime; therefore, the government must prove beyond a reasonable doubt not only that a crime alleged was actually committed, but also that the defendant charged was the person who committed it. Defendant Robert Lee Williams does not have to prove that he did not commit a charged offense, that someone else committed the offense, or that he is not the person identified as "Pimpin' Rob." Therefore, if the facts and circumstances that will be introduced in evidence leave you with a reasonable doubt as to whether or not Robert Lee Williams is the person who committed a crime charged against him, then you must find him not guilty of that offense.

Timing

The Indictment alleges that each offense charged was committed "between about" two dates, or "on or about" a certain date. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date alleged for that offense in the Indictment.

Controlled substances

In all of my Instructions, when I refer to a "controlled substance," I mean any drug or narcotic the manufacture, possession, possession with intent to distribute, or distribution of which is prohibited or regulated by federal law. The drug-trafficking offenses charged in this case allegedly involved one such controlled substance, cocaine base, which is commonly called "crack cocaine." I will refer to this controlled substance as "crack cocaine" throughout my Instructions.

Quantity of controlled substances

The drug-trafficking offenses charged in Counts 1 through 4 in this case allegedly involved specific quantities of crack cocaine. The prosecution does not have to prove that these offenses involved the amount or quantity of crack cocaine alleged in the Indictment. However, *if* you find the defendant guilty of one or more of the drug-trafficking offenses charged in this case, *then* for each such offense on which you have found the defendant guilty, you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved crack cocaine, as alleged; and if so, (2) the *total quantity*, in grams, of the crack cocaine involved in that offense for which the defendant can be held responsible. In so

doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

* * *

I will now give you more specific Preliminary Instructions about the offenses charged in the Indictment. However, please remember that these Preliminary Instructions on the charged offenses provide only a preliminary outline of the requirements for proof of these offenses. At the end of the trial, I will give you further written Final Instructions on these matters. Because the Final Instructions are more detailed, you should rely on those Final Instructions, rather than these Preliminary Instructions, where there is a difference.

PRELIMINARY INSTRUCTION NO. 3 - COUNT 1: CONSPIRACY

Count 1 of the Indictment charges that, between about 2003 through August 17, 2005, the defendant knowingly and unlawfully conspired with other persons, known and unknown to the Grand Jury, to distribute 50 grams or more of crack cocaine. Mr. Williams denies that he committed this "conspiracy" offense.

For you to find the defendant guilty of this "conspiracy" offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

One, between about 2003 through August 17, 2005, two or more persons reached an agreement or came to an understanding to distribute crack cocaine;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time that the defendant joined in the agreement or understanding, the defendant knew the purpose of the agreement or understanding.

If the prosecution does not prove *all* of the essential elements of this offense beyond a reasonable doubt, then you must find the defendant not guilty of the "conspiracy" offense charged in Count 1 of the Indictment.

In addition, if you find the defendant guilty of this "conspiracy" offense, then you must also determine beyond a reasonable doubt the quantity of crack cocaine actually involved in the conspiracy for which the defendant can be held responsible,

as determination of drug quantity was explained briefly in Preliminary Instruction No. 2.

Finally, if you find beyond a reasonable doubt that the conspiracy charged in Count 1 existed, and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant, even though those acts were done or those statements were made in the defendant's absence and without his knowledge. This includes acts done or statements made before the defendant joined the conspiracy. On the other hand, an act or statement by someone other than the defendant that was not made during and in furtherance of the conspiracy cannot be attributed to the defendant in this way.

PRELIMINARY INSTRUCTION NO. 4 - COUNT 2: POSSESSION WITH INTENT TO DISTRIBUTE

Count 2 of the Indictment charges that, on or about August 17, 2005, the defendant knowingly and intentionally possessed with intent to distribute 23.74 grams of crack cocaine. Mr. Williams denies that he committed this "possession with intent to distribute" offense.

For you to find the defendant guilty of this "possession with intent to distribute" offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

One, on or about August 17, 2005, the defendant was in possession of crack cocaine;

Two, the defendant knew that he was, or intended to be, in possession of a controlled substance; and

Three, the defendant intended to distribute some or all of the controlled substance to another person.

If the prosecution does not prove *all* of the essential elements of this offense beyond a reasonable doubt, then you must find the defendant not guilty of the "possession with intent to distribute" offense charged in Count 2 of the Indictment.

In addition, if you find the defendant guilty of this "possession with intent to distribute" offense, then you must also determine beyond a reasonable doubt the quantity of crack cocaine actually involved in the offense for which the defendant

can be held responsible, as determination of drug quantity was explained briefly in Preliminary Instruction No. 2.

PRELIMINARY INSTRUCTION NO. 5 - COUNTS 3 & 4: DISTRIBUTION

Counts 3 and 4 of the Indictment charge separate "distribution" offenses. More specifically, Count 3 charges that, on or about August 16, 2005, the defendant knowingly and intentionally distributed .44 grams of crack cocaine. Count 4 charges that, on or about August 17, 2005, the defendant knowingly and intentionally distributed 1.1 grams of crack cocaine. Mr. Williams denies each of these charges.

For you to find the defendant guilty of a particular "distribution" offense, the prosecution must prove beyond a reasonable doubt *both* of the following essential elements:

One, on or about the date alleged, the defendant intentionally distributed crack cocaine to another; and

Two, at the time of the distribution, the defendant knew that what he was distributing was a controlled substance.

If the prosecution does not prove *both* these essential elements beyond a reasonable doubt as to the particular "distribution" offense in question, then you must find the defendant not guilty of that "distribution" offense.

In addition, if you find the defendant guilty of a particular "distribution" offense, then you must also determine beyond a reasonable doubt the quantity of crack cocaine actually involved in that offense for which the defendant can be held

responsible, as determination of drug quantity was explained briefly in Preliminary Instruction No. 2.

PRELIMINARY INSTRUCTION NO. 6 - COUNT 5: POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG-TRAFFICKING CRIME

Count 5 of the Indictment charges that, on or about August 17, 2005, the defendant possessed a firearm, that is, a Smith and Wesson semi-automatic hand gun, serial # TEW9861, in furtherance of either or both of the drug-trafficking crimes charged in Count 1 ("conspiracy") and Count 2 ("possession with intent to distribute"). Mr. Williams denies that he committed this offense.

For you to find the defendant guilty of this offense, the government must prove *both* of the following essential elements beyond a reasonable doubt:

One, on or about August 17, 2005, the defendant committed one or more of the drug-trafficking offenses charged in Count 1 and Count 2 of the Indictment; and

Two, the defendant knowingly possessed the firearm alleged in furtherance of the drug-trafficking offense or offenses that you found he committed;

If the prosecution does not prove *both* of the essential elements of this offense beyond a reasonable doubt, then you must find the defendant not guilty of the offense of "possession of a firearm in furtherance of a drug-trafficking crime," as charged in Count 5 of the Indictment.

PRELIMINARY INSTRUCTION NO. 7 - COUNT 6: FELON IN POSSESSION OF A FIREARM

Count 6 of the Indictment charges that, on or about August 17, 2005, the defendant, having previously been convicted of a felony drug offense, knowingly possessed, in and affecting commerce, one firearm, that is, a Smith and Wesson semi-automatic hand gun, serial # TEW9861. Mr. Williams denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

One, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year;

Two, the defendant thereafter knowingly possessed a firearm; and

Three, the firearm was transported across a state line at some time during or before the defendant possessed it.

If the prosecution does not prove *all* of the essential elements of this offense beyond a reasonable doubt, then you must find the defendant not guilty of the "felon in possession of a firearm" offense charged in Count 6 of the Indictment.

PRELIMINARY INSTRUCTION NO. 8 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Robert Lee Williams is presumed innocent of each of the charges against him and, therefore, not guilty of those offenses. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to a particular charge against the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of that offense against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of a charged offense, you must find him not guilty of that offense.

PRELIMINARY INSTRUCTION NO. 9 - REASONABLE DOUBT

I have previously instructed you that the prosecution must prove a charged offense "beyond a reasonable doubt" for you to find the defendant guilty of that charged offense. A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. It may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

PRELIMINARY INSTRUCTION NO. 10 - OUTLINE OF TRIAL

The trial will proceed as follows:

After these preliminary instructions, the prosecutor may make an opening statement. Next, the lawyer for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

The prosecution will then present its evidence and call witnesses, and the lawyer for the defendant may, but has no obligation to, cross-examine. Following the prosecution's case, the defendant may, but does not have to, present evidence and call witnesses. If the defendant calls witnesses, the prosecutor may cross-examine them.

After the evidence is concluded, I will give you most of the Final Instructions. The lawyers will then make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you the remaining Final Instructions on deliberations, and you will retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 11 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other Instructions that I may give you during the trial. Evidence is:

1. Testimony.

2. Exhibits that I admit into evidence.

3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.

2. Objections and rulings on objections.

3. Testimony I tell you to disregard.

4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence is not determined merely by the number or volume of

documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict his or her testimony. The quality and weight of the evidence are for you to decide.

PRELIMINARY INSTRUCTION NO. 12 - RECORDED CONVERSATIONS

As part of the evidence in this case, you may hear one or more recordings. The conversations on such recordings were legally recorded, and you may consider the recordings just like any other evidence. The recordings may be accompanied by a typed transcript. You are permitted to view a transcript for the purposes of helping you to follow the conversation as you hear a recording and helping you to keep track of the speakers.

A transcript, if present, may undertake to identify the speakers engaged in the conversation. However, the identity of the speakers as set out in a transcript is not evidence; rather, it is merely the opinion of the person who transcribed the recording. Whether or not a transcript correctly or incorrectly identifies the speakers is entirely for you to decide based upon what you hear about the preparation of the transcript in relation to what you hear on the recording.

Also, a recording itself is the primary evidence of its own contents. Whether a transcript correctly or incorrectly reflects a conversation is entirely for you to decide based on what you hear about the preparation of that transcript in relation to what you hear on the recording. If you decide that a transcript of a conversation is in any respect incorrect or unreliable, then you should disregard it to that extent. Differences in meaning between what you hear in a recording of a conversation and read in a transcript, if available, may be caused by such things as the inflection in

a speaker's voice. You should, therefore, rely on what you hear, rather than what you read, when there is a difference.

Similarly, if you find that any portion of a recording is inaudible or partially inaudible, because of such things as actual gaps in the recording or other noise on the recording, or if you hear something different from what is indicated in the transcript in a portion of the recording that is inaudible or partially inaudible, then you must disregard the transcript to the extent that the transcript attempts to indicate what the persons on the recording said during the inaudible or partially audible portions. You may also consider whether inaudible or partially audible portions of the recording indicate that the recording has been altered or damaged, such that it is unreliable, in whole or in part. Again, the recording itself, not any transcript, is the primary evidence of the contents of the recording.

PRELIMINARY INSTRUCTION NO. 13 - CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters

in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

PRELIMINARY INSTRUCTION NO. 14 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 15 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

PRELIMINARY INSTRUCTION NO. 16 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

PRELIMINARY INSTRUCTION NO. 17 - CONDUCT OF THE JURY DURING TRIAL

To insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own. You must decide this case based on the evidence presented in court.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

DATED this 26th day of June, 2006.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA